THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.1234 OF 2006

DATED:25.1.2006

Between:

Prashant Verma and another

…Petitioners

And

The Mandal Revenue Officer

Qutubullapur Mandal,

Ranga Reddy District and others

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.1234 OF 2006

ORDER:

The petitioners claim to be landlords in respect of land admeasuring Acs.24.21 gts. in S.Nos.41 and 42 of Jeedimetla Village. Insofar as an extent of Acs.20.00 is concerned, one B.Pochaiah was allegedly recognized as protected tenant under the provisions of A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short, the Act). However, the petitioners statedly continued to be in possession throughout the period of more than five decades. In 1992, the respondents 3 to 16 filed two petitions before the first respondent – one under Section 40 of the Act claiming succession certificate as legal heirs of late Pochaiah, and another one under Section 32 of the Act for restoration of possession to them. In the first instance, the Mandal Revenue Officer dismissed both the applications on 14.9.1995. The

appeal filed by the contesting respondents was, however, allowed by the second respondent and the matter was remanded for *de novo* enquiry. Again, the Mandal Revenue Officer passed orders on 16.1.2006. By the said order, the first respondent recognized the respondents 3 to 16 as legal heirs of protected tenant and further directed the Mandal Revenue Inspector to deliver possession of the land admeasuring Acs.6.33 gts. in S.No.41 and the land admeasuring Ac.5.10 gts. in S.No.42 situated at Jeedimetla.

Against any order passed by the Mandal Revenue Officer, appeal is provided to the Joint Collector under Section 90 of the Act. However, the petitioners allege that even before the orders are received by them, on 23.1.2006 at 3.30 p.m. subordinate officials of first respondent came to the subject land and started fixing boundaries and therefore they filed the Writ Petition seeking invalidation of the impugned order of the first respondent dt.16.1.2006.

Sri D.Prakash Reddy, learned Senior Counsel appearing for petitioners, strenuously contends that Section 40 of the Act does not confer any power or jurisdiction on the Mandal Revenue Officer to decide the succession to the property and that such jurisdiction vests only in the Civil Court. Secondly, he placed reliance on the decision of the Supreme Court in **Ponnala Narsinga Rao v. Nallolla Pantaiah,** and submits that an application under Section 32 of the Act has to be filed by protected tenant within a reasonable time and the application filed by respondents 3 to 16 after lapse of fifty years ought not to have been entertained by the Mandal Revenue Officer. The learned counsel also has taken this Court through the counter filed by the petitioners herein before the Mandal Revenue Officer way back in 1992 and contends that though these grounds were raised, the same were not adverted to by the Mandal Revenue Officer.

There is no denial that the second respondent is appellate authority against every order passed by Tahsildar or Deputy Tahsildar under the Act. It is also not denied that second respondent can as well decide all the questions having regard to the plain language of Section 40 of the Act and the decision of the Supreme Court in **Ponnala Narsinga Rao v. Nallolla Pantaiah** (supra). If at this stage, any opinion is expressed on the question raised by the petitioners, it would cause prejudice to both the parties and therefore this Court refrains from making any observations on the interpretation of Section 40 or with regard to the propriety of the first respondent entertaining the application under Section 32 of the Act after long delay. It is strenuously submitted that on 23.1.2006 the officials of the first respondent came to the petitioners' land and tried to interfere with the possession so as to induct contesting respondents into possession. The learned Senior Counsel submits that even before expiry of the period of limitation for filing appeal under Section 93 of the Act, i.e., sixty days, if the first respondent dispossess the petitioners and inducts the contesting respondents into the land, the remedy of appeal would be rendered futile. This Court cannot ignore the submission. Therefore, the Writ Petition is disposed of in the following manner.

The petitioners are directed to avail remedy under Section 90 of the Act by filing appeal before the second respondent within a period of one week from the

date of receipt of a copy of this order. As and when such appeal is filed, along with an application for stay of the operation of the order of first respondent dt.16.1.2006, second respondent shall immediately pass orders on the interlocutory application within a period of one week from the date of appeal. The petitioners are given liberty to approach the Joint Collector with a copy of this order and press for interim orders. The second respondent is further directed to dispose of the appeal itself; needless to say after giving notice to respondents 3 to 16 – within a period of eight weeks thereafter. Pending such exercise, if the petitioners are dispossessed from the subject lands, the appeal would be rendered useless. To avoid such a situation, it would be in the interest of justice to order *status quo* as on today as to possession for a period of two weeks, because the respondents 3 to 16 themselves filed application under Section 32 of the Act, for restoration of possession claiming as legal heirs of protected tenant.

The Writ Petition is accordingly disposed of.

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(V.V.S.RAO, J)

25.1.2006

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Note:Issue CC by 27.1.2006.

(B.O)

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